

AGREEMENT BETWEEN CITY OF FRESNO
AND
HOUSING AUTHORITY OF THE CITY OF FRESNO
(Regarding HUD Capital Funding Grant Proposal and
Additional Security and Protection Services for Public Housing)

THIS AGREEMENT is entered into effective the **1st day of July, 2011**, by and between the Housing Authority, City of Fresno, hereinafter called "Housing Authority," and the City of Fresno, California, a municipal corporation, hereinafter called the "City."

RECITALS

WHEREAS, the City provides local law enforcement services within the jurisdiction of The Housing Authority; and

WHEREAS, the Housing Authority variously provides public housing services and activities for residents of City; and

WHEREAS, the Housing Authorities is funding the services provided for in this Agreement through the Public Housing Capital Funds Program, referred to hereafter as "Capital Program" which program and award documents are incorporated herein by this reference; and

WHEREAS, the Housing Authorities warrants that Capital Programs make available funding to reimburse local law enforcement for additional security and protection services provided in pursuit of the Public Housing programs supported by the Housing Authority; and

WHEREAS, the parties are desirous of entering this Agreement that provides terms and conditions where under the Housing Authority shall utilize the Capital Program funds to reimburse City for additional law enforcement security and protective services provided by City under the Capital Program and related activities and related activities; and

WHEREAS, performance of the services by City will be of benefit to City and in the public interest.

AGREEMENT

NOW, THEREAFTER, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, it is mutually agreed as follows:

1. Scope of Services.

City agrees to provide the following law enforcement services in accordance with and pursuant to the Capital Program and this Agreement, subject to all applicable Constitutional and local law requirements:

- (a) Capital Program related law enforcement services will be provided by one Sworn Police Officer at the following Housing Authority's complexes located in southwest Fresno:

Sequoia Courts (CAL 6-2), Sierra Plaza (CAL 6-3), Fairview Heights Terrace (CAL 6-4), Sequoia Courts Terrace (CAL 6-5), Garland Gardens (CAL GG) Sierra Terrace (CAL 6-6), Yosemite Village (CAL 6-10), DeSoto Gardens 1 and 2 (CAL 28-38 and CAL 6-26), Mariposa Meadows (USDA Rural Development); and

Capital Program related law enforcement services will be provided by one Sworn Police officer at the following Housing Authority's complexes located in southeast Fresno:

Monte Vista (CAL 6-7), Cedar Courts (CAL 6-8), Cedar Courts II (CAL 6-9B), Viking Village (CAL 6-15), Inyo Terrace (CAL 6-16);

hereafter collectively called the "Target Areas."

- (b) Capital Program law enforcement services will be provided through the full-time assignment to the respective Target Areas of one (1) Sworn Police Officer each for a total of two (2) Sworn Police Officers, for the funded period not to exceed twelve (12) months commencing **July 1, 2011** and ending **June 30, 2012**. On an as needed basis, Capital Program services may be diverted to Housing Authority complexes within the incorporated limits of the City of Fresno and outside of the "Target Areas," with the prior written approval of the Fresno Police Department's District Commander.
- (c) Specific duties for law enforcement services to be performed by each Sworn Police Officer under this Agreement for the respective designated Target Areas in paragraph (a) above, include the following:
- (i) Enforcement of laws in accordance with Fresno Police Department policies;
 - (ii) Submission of weekly crime reports to the Housing Management District Manager;
 - (iii) Referral of resident victims to support services;
 - (iv) Subject to Fresno Police Department Scheduling, flex work hours Daylight Savings Time from 10:00 am – 8:00 pm. Work one (1) Saturday or Sunday per month during the months of June-September and work one (1) Saturday or Sunday every two months during the months of October-May. Inform Housing Management Property Manager in advance if the work schedule changes;
 - (v) Submission of available Annual Crime Stats for Public Housing upon request of Housing Management District Manager;
 - (vi) Attend conferences with Housing Management District Manager upon request regarding resident concerns;

- (vii) Regular patrols per site; approximately two patrols in vehicle and one on foot; and
- (viii) In accordance with **Attachment A** (Memorandum of Understanding) between the parties, **dated July 1, 2011**, provide criminal history background checks through the California Law Enforcement Teletype System (CLETS).

2. Office Facilities and Reimbursement to City for Grant Related Activities.

- (a) Housing Authority agrees to provide a secure office at Sequoia Courts Terrace (CAL 6-5) for use by the Sworn Police Officer in the southwest district and a secure office at Cedar Courts (CAL 6-8) for use by the Sworn Police Officer in the southeast district. Each office shall be equipped with a telephone, computer and access to restroom facilities for the respective officer's use. At its sole cost and expense, Housing Authority shall be responsible for providing all utilities (HVAC, phone, internet, electricity, water, sewer, garbage, etc.), repair and maintenance services at each office.
- (b) For the aforementioned services, the Housing Authority agrees to reimburse City for costs incurred by City hereunder, in an amount not to exceed **\$ 246,062**, for the period beginning **July 1, 2011** and ending **June 30, 2012** to include salary and fringe benefits for two (2) Sworn Police Officers, and for allowable purchases as outlined in the OMB Circular A-87. City will bill the Housing Authority on a quarterly basis. Payment of any bill shall be contingent on receipt of the above referenced weekly reports and completion of described activities.

3. Term.

The term of this Agreement shall commence on **July 1, 2011** and shall end on **June 30, 2012**, subject to earlier termination as provided herein.

4. Termination.

Notwithstanding the foregoing, this Agreement may be terminated immediately by either the Housing Authority or City upon the other party's default that is not cured within 30 days of receiving written notice thereof, by giving written notice to the other party of the termination. Such termination shall be subject to obligations due and owing on the date of termination.

5. Compliance with Governing Law.

The services provided by the City under this Agreement are over and above the City's budgeted positions. The parties agrees that Capital Program funds shall not be used to replace funds of, or positions otherwise funded by, City.

As applicable, costs and expenditures must be allowable in accordance with OMB Circular A-87, *Cost principals for state, local and Indian Tribal Governments*. Capital Funds are subject to the Single Audit Act Amendments of 1996 and the OMB Circular, A-133, *Audits of state, local government and non-profit organizations*.

City agrees to provide any substantiation and support for services, fees, costs and expenses upon reasonable request of the Housing Authority for a period of not less than three (3) years after final payment. Records of City's expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall be available to Housing Authority or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three (3) years after final payment. In addition, all books, documents, papers, and records of City pertaining to the services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

6. Capacity of City.

In rendering the aforesaid services, it is mutually understood and agreed that the City, its agents and employees, shall at all times be acting and performing independently and not as employees of the Housing Authority. The Sworn Police Officers shall at all times be under the direction and control of and must report to the Chief of Police of the City of Fresno Police Department. Nothing in this Agreement and nothing in the course of dealings between the Housing Authority and City shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship. City, and City's employees and agents, shall not be treated by the Housing Authority as employees of the Housing Authority for any purpose including, but not limited to, laws providing for Social Security taxes and benefits, state or federal unemployment compensation taxes, state or federal income tax withholdings or worker's compensation benefits. City agrees that it has sole responsibility to pay Social Security, State Disability Insurance, Worker's Compensation Insurance and all other wages and benefits applicable to its employees. City further agrees to hold the housing Authority harmless for any and all claims made with regard to such matters.

7. Indemnification and Insurance.

- (a) City shall indemnify, hold harmless and defend the Housing Authority and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, the Housing Authority or any other person, and from any and all claims, demands and actions in the law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of City or any its officers, officials, employees, agents or volunteers in the performance of this Agreement.

The Housing Authority shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, the Housing Authority or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the Housing Authority or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or volunteers, and the Housing Authority or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This subsection (a) shall survive termination or expiration of this Agreement.

- (b) It is understood and agreed that City and the Housing Authority maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other party and each of its officers, officials, agents, employees and volunteers. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

8. Attorney's fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

9. Precedence of Documents.

In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within any exhibit or attachment. Furthermore, any terms or conditions contained with any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

10. Notices.

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

11. Binding.

Once this Agreement is signed by the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assignees, transferees, agents, servants, employees and representatives.

12. Assignment.

There shall be no assignment by either party or its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assignees, shall be null and void unless approved in writing by the other party.

13. Waiver.

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. Governing Law and Venue.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purpose of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

15. Headings.

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

16. Severability.

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

17. Interpretation.

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

18. No Third Party Beneficiaries.

The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

19. Exhibits.

Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.

20. Entire Agreement.

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing and signed by both parties.

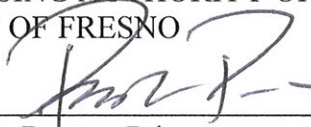
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IN WITNESS WHEREOF the parties have caused their authorized agents to execute this Agreement at Fresno, California the day and year first above written.

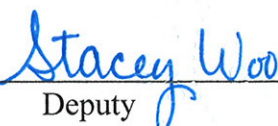
HOUSING AUTHORITY OF THE
CITY OF FRESNO

By: 
Preston Prince
Executive Director

CITY OF FRESNO

By: 
Jerry Dyer, Chief of Police
Fresno Police Department

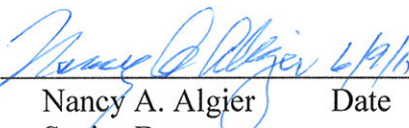
ATTEST:
Rebecca E. Klisch, City Clerk

By:  6/27/11
Deputy Date

Addresses:

Housing Authority of the City of Fresno
Attention: Preston Prince,
Executive Director
1331 Fulton Mall
Fresno, CA 93721

APPROVED AS TO FROM:
James C. Sanchez, City Attorney

By:  6/27/11
Nancy A. Algier Date
Senior Deputy

City of Fresno Police Department
Attention: Randy Dobbins
Southeast District Commander
2323 Mariposa Mall
Fresno, CA 93721

Attachment: Attachment A - Memorandum of Understanding, dated July 1, 2011.

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

BACKGROUND

On January 1, 1995, California Penal Code Section 11105.03 became effective, allowing local law enforcement agencies to obtain State criminal history information through CLETS (California Law Enforcement Teletype System) at the request of the local Housing Authorities for the purpose of screening prospective residents and prospective and current Housing Authority staff. The statute specifies that a local agency may run criminal history checks through CLETS and release to the Housing Authority a record of convictions for certain specified violent felonies that have occurred within the past ten years. Information on any offences committed by any person under 18 years of age are not reportable under the statute.

Department of Justice guidelines require the development of a Memorandum of Understanding between the local Housing Authority and the local law enforcement agency outlining each agency's responsibilities in order to allow the release of criminal history information under this statute. The following Agreement is intended to serve that purpose:

AGREEMENT

This Agreement is entered into effective the **1st day of July, 2011**, by and between the City of Fresno, through its Police Department, hereafter referred to as the "Police Department," and the Housing Authority of the City of Fresno, hereafter referred to as the "Housing Authority." The parties agree as follows:


1. The Police Department will provide two (2) Sworn Police Officers employed through the Public Housing Capital Fund Program to run CLETS criminal history checks.
2. The Police Department will run criminal history checks on subjects that are submitted by the Housing Authority on an agreed upon request form if authorized by signature of a designated Housing Authority staff member.
3. The Police Department will screen CLETS printouts for reportable offenses as specified in Penal Code Section 11105.03.
4. The Police Department will record reportable offenses on the Housing Authority request form and deliver a copy of the completed form with any reportable criminal history information to a designated Housing Authority staff member, within five (5) working days from the date of the request. (Note: If it is known that the subject of a criminal history check is on probation or on parole, the document will be delivered to the appropriate probation or parole offices with a request to forward the document to the designated Housing Authority staff member.)
5. The Police Department will maintain a file on all Housing Authority criminal history checks, including the request form, any CLETS printouts and a copy of any criminal history information released to the Housing Authority for a minimum of three 3 years.
6. Only the Chief executive offices of the Housing Authority and his/her designated staff member(s) of the Housing Authority, designated in writing to the Police Department by the

chief executive officer, may request and receive criminal information, subject to the following paragraph.

7. Designated Housing Authority staff granted access to criminal history information must pass a criminal history background check, which will require submitting their fingerprints to the California Department of Justice and the Federal Bureau of Investigation (FBI), and a California Department of Motor Vehicle clearance.
8. Designated Housing Authority staff will review and authorize, by signature, on the request form, all requests for criminal history check under the statute.
9. Any information obtained from CLETS criminal history pursuant to this Agreement is confidential and the Housing Authority shall not disclose or use the information for any purpose other than that authorized in the statute.
10. The criminal history information released to the Housing Authority and all copies made from it shall be destroyed not more than thirty (30) days after the Housing Authority's final decision as to whether to act on the housing status of the individual to whom the information relates.
11. The Housing Authority shall adopt regulations governing the receipt, maintenance and use of the criminal history information. The regulations shall include provisions that require notice that the Housing Authority has access to criminal history information on applicants and employees who have access to Housing Authority residences.
12. Use of criminal history information is to be consistent with Title 24 of the Code of Federal Regulations and current regulations adopted by the Housing Authority.
13. This Agreement will automatically expire **June 30, 2012**, unless extended by future Agreement.

IN WITNESS WHEREOF the parties have caused their authorized agents to execute this Agreement at Fresno, California on **July 1, 2011**.

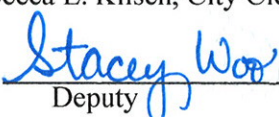
CITY OF FRESNO


Jerry Dyer, Chief of Police
Fresno Police Department


Date

Attest:

Rebecca E. Klisch, City Clerk

By:  6/27/11
Deputy Date

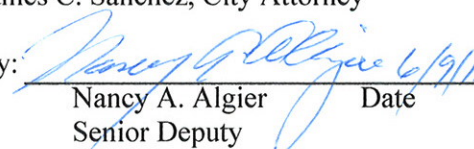
HOUSING AUTHORITY OF THE
CITY OF FRESNO


Preston Prince
Executive Director

Date

Approved as to form:

James C. Sanchez, City Attorney

By:  6/19/11
Nancy A. Algier Date
Senior Deputy

AGENDA ITEM NO. 1 E
COUNCIL MEETING 06/23/2011
APPROVED BY _____

June 23, 2011

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: RANDY DOBBINS, Captain
Southeast Policing District

SUBJECT: AUTHORIZE THE RENEWAL OF AN AGREEMENT BETWEEN THE CITY OF FRESNO HOUSING AUTHORITY AND THE POLICE DEPARTMENT FOR THE HUD CAPITAL FUNDING GRANT PROGRAM AND ADDITIONAL SECURITY AND PROTECTION SERVICES FOR PUBLIC HOUSING GRANT; AUTHORIZE THE CHIEF OF POLICE TO EXECUTE THE AGREEMENT AND REQUIRED PROGRAM DOCUMENTS FOR THE HUD CAPITAL FUNDING GRANT PROGRAM

RECOMMENDATIONS

It is recommended that Council authorize the renewal of an agreement between the City of Fresno Housing Authority and the Police Department for the HUD Capital Funding Grant Program; authorize the Chief of Police to execute the agreement and required program documents, for the HUD Capital Grant Program. The agreement will continue through **June 30, 2012**.

EXECUTIVE SUMMARY

The City of Fresno Housing Authority has made funding available for two sworn officers at various housing complexes. Funding under this project provides a maximum of **\$246,062** for 12 months for personnel costs and supplies. These funds are included in the FY 2012 budget. As a requirement for these funds, an agreement/MOU has been established by and between the City of Fresno, Police Department and the City of Fresno Housing Authority to provide two sworn officers at the Housing Authority's housing complexes located in southwest and southeast Fresno: Sequoia Courts, Sierra Plaza, Fairview Heights Terrace, Sequoia Courts Terrace, Sierra Terrace, Yosemite Village, DeSoto Gardens 1 and 2, Mariposa Meadows, Cedar Courts, Cedar Courts II, and Inyo Terrace. The agreement/MOU details the project activities. The City of Fresno Housing Authority agrees to pay the full sum, on a quarterly basis, through the term of the agreement. Council approval is needed to authorize renewal of the contract for services.

BACKGROUND

The mission of the Fresno Police Department is to enhance safety, service, and trust with our community. The Police Department recognizes and holds sacred the trust and confidence the community has placed in it to maintain a safe city with low levels of crime, violence, and to improve the quality of life in Fresno. Since the mid-90's, the Fresno Police Department has received funding from the City of Fresno Housing Authority to enhance local law enforcement capabilities through Community Oriented Policing techniques, specifically targeting public housing. Community policing calls for greater citizen responsibility and creates opportunity for residents in public housing areas to contribute to public safety in and around their neighborhoods. At the same time, community policing enhances police professionalism by giving officers the skills, technology, and motivation to develop innovative solutions for crime-related community problems.

Presented to City Council

Date 6/23/11

Disposition approved

The City of Fresno Housing Authority and the Police Department continue to work together to improve the quality of life for public housing communities. Many studies indicate a police presence and active enforcement play pivotal roles in the reduction of violent crime and an improved feeling of safety within the community.

FISCAL IMPACT

There is no fiscal impact to the General Fund. Police personnel costs will be paid through agreement with the City of Fresno Housing Authority.

JPD/jg/map
06/06/2011

Attachment: MOU